

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Interim Suspension Order Against:

XIAOLING ZHU, M.D.,

Physician's and Surgeon's Certificate No. A 98460

Respondent.

Agency Case No. 800-2019-061224

OAH No. 2021040610

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter by videoconference on May 5, 2021.

Thomas Ostly, Deputy Attorney General, represented petitioner William Prasifka, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Robert Hodges, Attorney at Law, represented Xiaoling Zhu, M.D., who was present.

The matter was submitted for decision on May 5, 2021.

FACTUAL FINDINGS

Introduction

1. On December 29, 2006, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 98460 to respondent Xiaoling Zhu, M.D. The certificate was active during all times relevant to this matter, and is scheduled to expire on July 31, 2022, unless renewed.

2. Petitioner William Prasifka is the Executive Director of the Board. On April 20, 2021, he petitioned the Medical Quality Hearing Panel of the Office of Administrative Hearings for an interim order suspending respondent from practicing medicine pursuant to Government Code section 11529. An Interim Suspension Order was signed on May 5, 2021. This decision is issued in support of the order, pursuant to Government Code section 11529, subdivision (g).

Consumer Complaint and Board Investigation

3. On November 4, 2019, an online consumer complaint was submitted to the Board regarding respondent. The consumer alleged that when she took her child to a medical appointment with respondent, a child psychiatrist, respondent appeared impaired. The consumer reported that respondent was late, was confused, her speech was slurred, and her eyes were heavy. Respondent referred to the child by the wrong gender and discussed the efficacy of a medication that the child was not in fact taking.

4. The Board commenced an investigation. It was discovered that respondent had recently been arrested for driving under the influence (DUI). A blood sample taken following her August 29, 2019, arrest tested positive for the following controlled substances: clonazepam (Klonopin), butalbital (Fioricet),

7-aminoclonazepam, alprazolam (Xanax), codeine, and zolpidem (Ambien). Two of the substances she tested positive for were medications that she had not been prescribed for many months, but which she had prescribed to her husband and her live-in nanny. Two prescription bottles were found in her car, for Ambien and Norco, that respondent had prescribed to her husband, who is also a physician.

5. The Board's investigator ran a CURES report, which revealed that respondent was being prescribed multiple controlled substances by multiple physicians, and that she prescribed excessive quantities of narcotics to her husband, her father, and her live-in nanny. The CURES report reflected that these prescriptions had been filled at various pharmacies in the Truckee area (respondent lives in Danville, Contra Costa County).

The Board's investigator interviewed pharmacists at two of the pharmacies. The manager of the Safeway pharmacy related that she contacted respondent and questioned her about prescribing Fioricet and Tylenol with codeine at the same time; respondent stated that she did not realize that they should not be prescribed together. This pharmacist also reported that respondent directed on the prescriptions that they could be refilled early because the patient was travelling.

The pharmacist at Tahoe Forest Pharmacy reported that after she told respondent she was not comfortable filling additional prescriptions for her, respondent offered to have her physician call the pharmacy, but no phone call transpired. The pharmacy's records for respondent indicated that as of July 2020, it would no longer be filling prescriptions for her.

6. The investigator obtained medical records from respondent's primary care physician and neurologist. The records documented withdrawal symptoms from a

reduction in the dose of prescribed Norco, and that respondent demanded an increased dose and early refills, and yelled at medical staff. Respondent was warned by her primary care physician that she had violated a substance abuse contract.

When interviewed by the investigator, respondent denied any history of illicit or recreational drug use and did not disclose any treatment for drug dependency.

7. At the request of the Board, respondent was examined by psychiatrist Bobby Singh, M.D., who conducted three video interviews in late 2020, and wrote a report dated February 4, 2021.

Respondent discussed her DUI arrest with Dr. Singh, acknowledging to him that she had taken a number of different medications close in time, and not in the manner that they had been prescribed. She stated that this was the only time she had done this. She denied being impaired and explained that she performed poorly on field sobriety tests because she was nervous and embarrassed because she was pulled over close to her children's school. Dr. Singh was skeptical about respondent's explanation, as well as about her explanations for prescribing to family members, and concluded that she demonstrated "no meaningful insight."

Dr. Singh diagnosed respondent with Opioid Use Disorder and Sedative-Hypnotic or Anxiolytic Use Disorder. Dr. Singh concluded that due to her substance use disorders, respondent could not safely practice medicine without appropriate monitoring, treatment, and oversight. He recommended that, at a minimum, respondent must 1) be under the treatment of a physician who can manage her care and prescriptions; 2) not obtain or take prescriptions medications outside of a bona fide patient-physician relationship; 3) be temporarily restricted from prescribing controlled substances, and never prescribe to family members or friends; and

4) undergo and be actively engaged in substance abuse treatment.

Respondent's Evidence

8. Respondent submitted a declaration in which she stated that the facts in the petition are misstated. She admitted that there was a "period of time" when due to "personal situations" she used prescription medications in a manner that was inappropriate, and stated that since the investigation began, she has only been using medications as prescribed by her treating physicians. She added that she plans on enrolling in the Pacific Assistance or similar program within a few months, when her five young children are out of school for the summer. Respondent added that no charges were brought against her after her arrest for DUI.

9. Respondent completed the UC Irvine/PBI course in Medical Ethics and Professionalism on March 21, 2021, and completed the UC San Diego/PACE courses in Physician Medical Record Keeping and Physician Prescribing in late April.

10. Respondent has not been practicing since the fall. Respondent does not believe that license suspension is fair or warranted. Respondent suggests that the appropriate action in this matter is to allow her to surrender her DEA permit and be allowed to place her license on inactive or probationary status while she pursues treatment at Pacific Assistance and establishes a relationship with a psychiatrist.

Ultimate Conclusions

11. The evidence establishes that respondent is impaired and not able to practice safely without supervision and treatment. Respondent was not forthright during the Board's investigation and has only recently acknowledged that she has a problem. She has not yet sought treatment for her condition.

Based on the petition and supporting documents, respondent has engaged in acts constituting violations of the Medical Practice Act and permitting respondent to engage in the practice of medicine would endanger the public health, safety or welfare. There is a reasonable probability that petitioner will prevail on charges that respondent is impaired by substance use disorders and that she inappropriately prescribed large quantities of controlled substances to her husband, father, and live-in nanny. The likelihood of injury to the public in not issuing the interim order outweighs the likelihood of injury to respondent in issuing the order.

LEGAL CONCLUSIONS

1. Government Code section 11529, subdivision (a), provides in pertinent part that an interim order suspending a medical license may be issued where it is shown that a licensee "is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare." Under this section, an administrative law judge may also impose conditions upon a medical license including drug testing, supervision of procedures or other license restrictions. Government Code section 11529, subdivision (e), provides that the administrative law judge shall grant the interim order where, in the exercise of discretion, the judge concludes that:

- (1) There is a reasonable probability that the petitioner will prevail in the underlying action.
- (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

2. Petitioner need only prove his case by a preponderance of the evidence, and this requires a demonstration of a reasonable probability that petitioner will prevail in establishing the violations alleged in seeking the interim suspension order. (*People v. Frangadakis* (1960) 184 Cal.App.2d 540, 549-550.) Further, when a governmental entity seeks to enjoin a statutory violation, evidence that it is reasonably probable that the agency will prevail on the merits gives rise to a rebuttable presumption that the potential harm to the public outweighs the potential harm to the respondent. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72-73.)

Petitioner has met these standards. There is a reasonable probability that petitioner will prevail in an action based upon respondent's substance use disorders and inappropriate prescribing of narcotics. Respondent's condition renders her unable to practice medicine safely without ongoing monitoring and treatment.

There is therefore a rebuttable presumption that the potential harm to the public in not issuing the interim suspension order outweighs the potential harm to respondent in issuing the order. Respondent did not rebut this presumption.

3. Section 11529, subdivision (a), gives discretion to the administrative law judge to impose license restrictions short of suspension, when appropriate. Respondent's suggested alternatives have been considered. Respondent has only recently acknowledged that she has a problem and has not yet sought treatment. The declaration of Dr. Singh established that respondent is not safe to practice at this time. Under these circumstances, petitioner has demonstrated that an interim order is necessary to protect the public health, safety and welfare. Protection of the public can be achieved only through actual license suspension.

ORDER

The Interim Suspension Order issued to Xiaoling Zhu, M.D., on May 5, 2021, shall remain in effect.

DATE: 05/13/2021

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings